(ಶ್ರೀ ಪಾಟೀಲ್ ನಂಜಪ್ಪ)

ವಿದ್ಯಾರ್ಥಿಗಳು ಯೂನಿವರ್ಸಿಟಿಯವರು ಮತ್ತು ಸರ್ಕಾರದವರು ಒಂದು ಕಡೆ ಕೂತು, ಒಂದು ನಿರ್ಣಾಯ ತೀರ್ಮಾನಕ್ಕೆ ಬಂದು ಒಂದು ಶಾಂತ ವಾತಾವರಣವನ್ನು ಕಲ್ಪಿಸಿಕೊಡ ಬೇಕೆಂಬುದು ನನ್ನ ಉದ್ದೇಶ, ಅದರ ಬದಲು ಪ್ರತಿ ದಿನ ಪ್ರೆಶ್ಟಿಕ್ ಪ್ರಾರಂಭವಾದರೆ ಒಳ್ಳೆಯದಲ್ಲ. ಅವರ ಬೇಡಿಕೆ ಏನಿದೆ, ಅದನ್ನು ಪರಿಹರಿಸುವುದಕ್ಕೆ ಒಂದು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಬೇಕು. ಇವತ್ತಿನ ದಿವಸ ಕೂಡ ನಾನು ನೋಡಿದ್ದೇನೆ, ಹುಡುಗರ ಮೆರವಣಿಗೆ ಹೊರಟಿದೆ. ಇದು ಪ್ರತಿ ದಿನ ನಡೆಯು ತ್ತಿದೆ. ಸರ್ಕಾರದವರು ನುಮ್ಮನೆ ಕೂತಿರತಕ್ಕದ್ದು ಒಳ್ಳೆಯದಲ್ಲ. ಆದ್ದರಿಂದ ನನ್ನ ಅರಿಕೆ ಏನೆಂದರೆ ಸರ್ಕಾರದವರು ಇದರ ಬಗ್ಗೆ ಒಂದು ಡಿಫಿನೆಟ್ ಅಶ್ಯೂರೆನ್ಸ್ ಕೊಟ್ಟು ಶಾಂತಿ ವಾತಾವರಣವನ್ನು ಕಲ್ಪಿಸಬೇಕೆಂದು ಪ್ರಾರ್ಥನೆ ಮಾಡಿಕೊಳ್ಳುತ್ತೇನೆ.

Private Member's Bills

(i) Mysore Land Revenue (Second Amendment) Bill, 1969

Leave to introduce

Sri L. SRIKANTAIAH.—I beg leave of the House to introduce the Mysore Land Revenue (Second Amendment) Bill, 1969.

Mr. SPEAKER.—The question is:

"That leave be granted to the hon. member Sri L. Srikantaiah to introduce the Mysore Land Revenue (Second Amendment) Bill, 1969."

The motion was adopted.

Mr. SPEAKER.—Leave is grantad to introduce the Bill.

Sri L. SRIKANTAIAH.—I beg to introduce the Mysore Land Revenue (Second Amendment) Bill, 1969.

Mr. SPEAKER.—The Mysore Land Revenue (Second Amendment) Bill, 1969, is introduced.

(ii) Mysore Public Men Enquiries Bill, 1969

Motion to consider—Debate continued.

Mr. SPEAKER.—Before the hon. Member Sri Nanje Gowda proceeds to offer his remarks, I wish to make one suggestion. I am sure he is interested in the speedy passage of the Bill through all its stages. In that case he should confine himself to the two points raised by the Hon. Minister for Parliamentary Affairs and offer his remarks thereon, particularly the constitutional provision. General observations would not be of any use. I think the hon. Member Sri Channabasappa and other Members are also interested in speaking on this Bill. The two points

raised by the Hon. Minister for Parliamentary Affairs are (1) that the Bill is not within the legislative competence of this Legislature and (2) the functions that are sought to be given to the judicial officers are non-judicial; and they are not concerned with administration of justice and that the function that is sought to be given to them is extra and for that extra function emoluments would have to be given to them and for that the recommendation of the Governor under article 207 (3) would be needed. If the hon. Member confines his observations to these points directly that would be very useful. General observations would not be of any use.

† SRI H. N. NANJE GOWDA.—I am not very eager that my Bill should be considered today itself. In fact, I am interested in securing the considered ruling of the Chair in this matter because it would give us a guideline for the future. Therefore, I request you, Sir, after hearing us you may proceed to the next item of business and you may give your considered ruling. I am prepared to wait for some days to go ahead with this Bill.

The Hon. Minister for Parliamentary Affairs took objection to the consideration of my Bill on two grounds. I have gone through his speech. He has said that this House is not competent to legislation this piece of legislation because it is beyond the jurisdiction of this House to undertake this legislation. Then he said that this attracts the mischief of article 207 (3). Coming to his first objection, I do not know whether the Hon. Minister has looked into my Bill. I have gone through his speech from the copy available in your Secretariat. He seems to think that I am enacting a law for the appointment of a Commission. That is not at all the purpose of my Bill. I am not legislating any provision for appointment of a Commission. I intend only to add some more offences to the existing list of offences under the law in the State of Mysore. In his first objection the Hon. Minister referred to serial No. 3 in List II of the 7th Schedule. I solicit your attention to the wording of this time. It says: " Administration of Justice; " After this expression there is a semi-colon and then we have the expression " Constitution and organisation of all courts except the Supreme Court and High Courts." The first expression is " Administration of Justice" and that is an item complete by itself and the second one is " Constitution and organisation of all courts except the Supreme Court and High Courts". This is a separate item.

Now I draw your attention to article 246 clause (3) :

> " Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule."

That means this House is competent to make laws " for such " item which is "administiation of Justice; Constitution and organisation of all courts except the Supreme Court and High Courts. " My Bill does

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not deal with "constitution and organisation of courts.", It only deals with "administration of justice" for which this House is competent under article 246 (3). The Hon. Minister also made a reference to serial No. 46, List III which deals with "Jurisdiction and powers of all courts except Supreme Court and High Court." In this connection, I may bring to your notice article 246 (2) :

> "Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the seventh Schedule."

Then you must also read clause (1) :

> "Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule".

According to article 246(2) List III this House is competent to make laws. This has to be borne in mind.

Sir, it is very strange that the Hon. Minister for Parliamentary Affairs has drawn the attention of this House to Second Schedule—Part D - Clause 11 - sub-clause (b) wherein it is stated that "actual service" of Judge includes time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge. On this very point, I wish to draw the kind attention of the Chair and of the Hon. Minister to the fact that this clause was specifically meant for such of the enactments which are to be passed by Parliament or State Legislature, wherein a separate Commission is constituted under any enactment. In the Commission of Enquiry Act 1952, they have dealt with the appointment of a Commission, and the Government have to constitute the Commission. When such Commissions are constituted, it is for the President to request any of the Judges to preside over such a Commission. That is why I have stated in the beginning itself that the Hon. Minister, while taking objection, might not have noticed this aspect. Nowhere have I made provision for the appointment of a Commission.

The Hon. Minister further objected that even if it is admitted that it is within the legislative competence of this House, it is hit by Article 207 (3). Article 207 (3) says :—

> "A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill."

The Hon. Minister also said that this is a Financial Bill, but he has not shown any provision of this Bill, wherein expenditure is incurred from

the Consolidated Fund. To cite an example, I would like to draw your attention to page 24 of the Lok Sobha decisions from the Chair, 1957 :

> " 42 Bills : Essential Services Maintenance Bill : President's recommendation for consideration of the Bill under Article 117(3) and Financial Memorandum under Rule 69 not necessary :
>
> On the 5th August, 1957, when the Home Minister rose to move the motion for consideration of the Essential Services Maintenance Bill, Shri V. P. Nayar, on a point of order, submitted that the Bill created a special penal provision to meet a particular situation and if thousands of Central Government employees are arrested under this Act and kept in jails, it would entail huge additional expenditure from the Consolidated Fund of India. He, therefore, contended that the Bill could not be proceeded with in the absence of President's recommendation under clause (3) of Article 117 of the Constitution. Another Member Shri S. C. Gupta contended that since the Bill involved expenditure it should also have been accompanied by a Financial Memorandum in terms of Rule 69 of the Rules of Procedure. Ruling out both the points of order the Speaker observed :
>
> " Merely because a new offence is created under the Act there is no new Court that is established."

This is very relevant and is a guideline for the Chair in giving a Ruling. I am not establishing any new Code, not even a new Commission in this Bill. I have also attempted to create a new offence under this Bill.

> " Therefore, on that ground there is no additional expenditure. Whoever is an offender, whoever has committed an offence or illegal acts, may be put into jail. There is a general provision for that.
>
> If some more money is wanted that will come by way of Supplementary Grants. Therefore no special provision is necessary."

This is also very relevant to my Bill. If some additional expenditure is necessary to implement this Bill, it will come by way of Supplementary Grants. About the financial memorandum, it says :—

> " Regarding Shri S. C. Gupta's point of order, the Speaker observed :
>
> " Shri S. C. Gupta has referred to rule 69 which requires a financial statement to be attached, wherever there is a commitment that some money will be expended under the provisions of the Act. If the provisions of the Act make a particular act illegal every man who is in this country, or under any Government is expected to obey the Act. Are we to assume that

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every man will go against it, and presume that he will disobey or discourage it and might even go to jail ?

The financial statement applies in cases where under the law there is a need, irrespective of another man breaking the law. In the normal execution of the law, the Government may require or commit some expenditure. Therefore, this rule does not apply."

Here also I have attempted to create an offence. Even if a non-official subordinate, right from the Chief Minister to a Taluk Board President, is charged with corruption, I have added such offences to the existing number of offences. Therefore, I have not attempted to create any new Code or plead for the establishment of a Commission of Enquiry. I have only added additional offences to the existing ones. Therefore, the two objections raised by the Hon. Minister for Parliamentary Affairs are not tenable, and under the Constitution, this House is competent, as already explained, to pass any legislation under the relevant articles which I have already mentioned. I request that the Chair may please rule out the objections raised by the Hon. Minister and allow my Bill to be taken into consideration.

† SRI H. M. CHANNABASAPPA.—Mr. Speaker, Sir, I have watched with greatest care the arguments advanced by the Hon. Minister for Parliamentary Affairs objecting to the introduction of a very healthy Bill to promote public morale in this country brought by the hon. Member Sri H. N. Nanje Gowda. In fact, the Hon. Minister himself should have brought such a Bill. I waited for quite a long time hoping that the Government would bring such a Bill, particularly in the context of their not having accepted the Lok Pal and the Lok Ayukta measures in the Mysore State. Sir, the way in which the Bill is being viewed by the Government is rather incorrect. They should not do it. Formerly, when this Bill came up for introduction and a financial memorandum also accompanied it, unfortunately—I do not know the reasons behind it—the Governor did not give recommendation for this healthy and very constructive Bill. Later on, the hon. Member Sri Nanje Gowda was obliged to remove the clauses which involved additional expenditure and has brought the Bill again before this House after it. It is for this House either to accept the Bill or throw it out. But the Parliamentary Affairs Minister has put forward a very flimsy ground while objecting to the introduction of this Bill.

Firstly, he raised his objection under article 207 (3) of the Constitution, which reads as follows :

"207 (3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of

the State unless the Governor has recommended to that House the consideration of the Bill.".

Sir, this is not at all a Money Bill, in the sense that it does not involve any additional expenditure on an additional institution. The hon. Minister has construed certain things to mean that this Bill purports to establish a new Court, but it is not so. As Sri Nanje Gowda has very aptly argued, it purports to add to the national offences to be tried by the Courts. The Hon. Minister will concede that if an additional act on the part of an individual is made an offence and it is introduced in the Indian Penal Code, that does not become a money Bill. If more people commit offences, naturally additional expenditure would have to be incurred to feed those people. But that cannot become an additional expenditure. It is only when we establish a new institution, it would entail additional expenditure on the Consolidated Fund of India and then it would become a Money Bill. Supposing tomorrow we make smoking an offence under the Indian Penal Code. Then are we to consider it as a Money Bill and is it to be accompanlled by a financial memorandum along with the recommendation of the Governor? It cannot be comprehended how such a thing could be compalled. Here also, certain things are incorporated in the Bill which are to be carried out by the normal agency in regard to trial, scrutiny and enquiry. The Hon. Minister might contend that scrutiny and enquiry does not form part of dispensation of justice. I may do it due to ignorance of of law, but how can the Hon. Minister with his profound knowledge of law commit such a mistake? Scrutiny is part and parcel of the process of dispensation of justice. The Hon. Minister knows as an able lawyer that in the Criminal Procedure Code it is clearly laid down that necessary enquiry, before investigation is ordered, is a part of the work of the Magistrate and the Court. Therefore, I am sure, he will not stretch his imagination to that extent and say that enquiry is not a part of dispensation of justice. Further, the preliminary scrutiny and preliminary enquiry has been one of the essential features of this bill before sending the case for investigation and powers have been given to the High Court to find out whether there is a *prima facie* case, to make enquiries before coming to a decision whether a person could be found guilty and if a *prima facie* case is later on established by the preliminary enquiry, then there is the normal agency which will deal with the offence. Therefore, there is absolutely no base or ground or any reason whatsoever for the Hon. Minister to say that the process of scrutiny will not form part of the dispensation of justice.

Sir, the hon. Member Sri Nanje Gowda, has also quoted the decision of the Speaker of the Lok Sabha which says that a bill of this nature which adds to the national offences and provides for prosecution of fresh crimes will not entail any additional expenditure and cannot be considered, by any stretch of imagination, to be a money Bill and therefore no recommendation of the Governor is necessary. I take it, Sir, that there is no ground for the contention of the Hon. Minister.

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Then, the second contention of the Hon. Minister is that this House is not competent to consider this Bill. This is very surprising and, of course, he is a very clever lawyer and has tried to establish a case for that. In this connection, I would invite your attention to Seventh Schedule, List II—State List item No. 3 which reads thus :

> "3. Administration of justice ; constitution and organisation of all courts, except the Supreme Court and the High Court ; officers and servants of the High Court ; procedure in rent and revenue courts ; fees taken in all courts except the Supreme Court."

5-30 P.M.

These are the five items which come under the State list item No. 3 This Bill does not purport nor does its proviso make provision for the constitution and organisation of the High Court or the Supreme Court. This Bill comes exclusively within the purview of Administration of Justice. Regarding Administration of Justice, I would like him to see item No. 65 which he has very cleverly avoided. It reads like this :

> "Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this List."

In this list, Administration of Justice is one of the matters and so this House is competent to make a law fixing the jurisdiction and prescribing the powers of the High Court. Therefore, nothing prevents this House from legislating and expanding the powers of the High Court or restricting the powers of the High Court. Either way the House is competent. This Bill proposes to prescribe, enhance or give some more powers to the High Court to deal with certain things. It provides for some of the functions like preliminary scrutiny and enquiry and in regard to enquiry, the procedure and and powers of the High Court have also been prescribed. So, I hope the Hon. Minister Sri Puttaswamy will agree with me. That these are matters which will definitely come within the legislative competency of the House and by no stretch of imagination can this Bill opposed on some flimsy grounds. Such Bills do come before the House and our Hon. Speaker has stated that he will give his considered ruling in this matter. If it is considered as Money Bill, I am afraid every Bill that has been passed prescribing more powers to the High Court will have to be considered as Money Bill. Therefore, any hasty decision in this matter will have far-reaching consequences and so let there not be any hurried decision in this respect. We are also not in a hurry because we know the result if hurried decision is taken in this regard. We all know that such a Bill which is meant for the good of the people and for purifying the public life is a necessity and therefore it is before the House. Such a Bill has been introduced in Uttar Pradesh. Here also we are seized of the matter

and it has got to be looked into strictly from the legal point of view and also the administrative point of view. Therefore I appeal to you, Sir, to make a special study of what is stated by Sri Nanje Gowda and give a considered ruling in favour of consideration of the Bill and ruling out the objections raised by Hon. Minister Sri Puttaswamy.

MR. SPEAKER.—I am afraid the arguments of the Minister for Parliamentary Affairs have not been sufficiently appreciated. I am not saying that the hon. Member's grounds are bad. My impression is that he is not creating a new Act or new offence. Accusation is defined in the Bill as imputation of misconduct against a person. But the word 'misconduct' is not defined here. 'Misconduct' is defined in various other Statutes. Hon. Member wants the Chief Justice and other Judges of the High Court or the District Judges to carry on the investigation which is now being done by the Police under the Criminal Procedure Code. In trying an offence, the High Court and the District Judges perform a judicial duty. Judicial decision is something which can be enforced by law immediately. It is not a question of a report or enquiry or investigation, or anything of the type. District Judges pass orders in civil cases and in criminal cases. For instance, in a murder case, the District Judge either acquits the accused or he convicts him imposing a sentence of imprisonment or to death penalty or some other punishment. In civil cases, he passes a decree or order which can be executed. That is a judicial function. What you are entrusting to the High Court Judges under this B ll is only a sort of an enquiry against individuals which is a non-judicial function. Therefore, caluse 13 of the Bill says that after the whole thing is done ultimately he should be prosecuted in the ordinary criminal courts. Practically that mater also comes in appeal to the High Court. They may decide that case and that will be a judicial function. Here it is not a judicial function under the Bill. Therefore, under the second schedule, para 11 (b) it is said, that if it is the desire of any legislature that the High Court Judges should be given a work which is non-judicial in character, that could be done only at the request of the President and not otherwise. And it does not stop there. It is after all a request and the judge concerned may agree or may not agree. If the judge has to do any non-judicial function, you are giving something which is not part of the regular function, which means that you will have sufficient number of judges on the Bench. Additional staff would be necessary and probably additional judges will be necessary. Under this Bill, if it is enacted, a number of cases are bound to come up and many more judges may be necessary. This being a non-judicial matter, he says, extra expenditure is bound to be there for which sanction under article 207 is necessary. These are the points.

If the hon. member wants to say anything on these points he is at liberty to do so.

Sri H. M. CHANNABASAPPA.—I am very happy, Sir, that the Chair has put certain points for us to answer. The points raised are : (1) the word 'misconduct' has not been defined anywhere ; (2) it is not a regular judicial function of the High Court Judge ; (3) this is exclusively a non-judicial work ; (4) this is purely relating to investigation which is non-judicial and is not enforceable at law.

Sri K. PUTTASWAMY.—The point that I made, as the Hon'ble Speaker just now explained, is that if we go through the Bill, the judges are called upon to do judicial functions. The functions that are expected to be discharged by a High Court Judge under this Bill are non-judicial. Therefore, it means that if a High Court Judge has to be assigned non-judicial function it can be done only at the request of the President, and subordinate judiciary is subject to the control of the High Court. The judges cannot be expected to discharge non-judicial functions.

Sri H. M. CHANNABASAPPA.—I quite understand the difference between judicial function and non-judicial function. Even now the Magistrates do undertake a preliminary enquiry to find out whether there is a *prima facie* case, or not. As is well-known, the Magistrate is a part of judiciary and he has to perform functions under the Cr. P. C. This system of enquiry by a jurisdictional Magistrate is in vogue for a long time. When the Magistrate undertakes this sort of enquiry, are we to say that he is not doing a judicial function ?

Mr. SPEAKER.—The hon. Member may talk about District Judges and not about Magistrates.

Sri H. M. CHANNABASAPPA.—Magistrate is a judicial officer. I say that a judicial officer, namely, a Magistrate is expected to discharge certain functions under the Cr. P. C. and when he undertakes an enquiry to find out whether there is a *prima facie* case, we cannot understand how it is a non-judicial function. It is really beyond my comprehension, how the Parliamentary Affairs Minister, who is himself a lawyer of good standing could go to the length of saying that an enquiry by a Magistrate or judicial officer is work of a non-judicial nature. Enquiry is part and parcel of the judicial work and it cannot be characterised as non-judicial. I have made out the case in the context of the accepted principle that a judicial officer can go and make a preliminary enquiry and find out whether there is a prima facie case for investigation. Under this Bill, the High Court is not the investigating agency. It is only when it is established that there is a prima facie case, that further steps would be taken by the normal agency of the Vigilance Commission and the police. It is far from truth and far from reality if it is contended that the High Court is going to make the investigation. That is not the scheme of things in this Bill.

Secondly, as I pointed out, "MIS-CONDUCT" is not defined anywhere in the Bill.

Mr. SPEAKER.—I have stated that the Bill has created no new offence.

Sri H. M. CHANNABASAPPA.—MISCONDUCT is an offence and if it is not defined, we will have to define it.

Mr. SPEAKER.—This Bill does not create a new offence.

Sri H. M. CHANNABASAPPA.—"MISCONDUCT" is an offence which must be defined, but it is a point of detail which we will have to consider when we take up the consideration of the Bill. You cannot say at this stage that this is a bar.

Mr. SPEAKER.—The hon. Member has not properly understood. There is no attempt in the Bill either to create a new court or a new offence. "Misconduct" as defined in various laws is contemplated. It need not be defined here. The hon. Member is trying to have a machinery for going into the offence committed by the Ministers. The point is that it is not part of the function of the High Court and the judiciary. That is the contention.

Sri H. M. CHANNABASAPPA.—That aspect of it, I have already answered. Therefore, it is not correct to say that the High Court carries on non-judicial work, namely, the investigation part of it. Normally, the agencies for investigation are the Vigilance Commission and its establishments, and the Police.

The High Court is being empowered to do only the preliminary scrutiny and enquiry to establish a prima facie case or to do away with the case if there is no prima facie case and that process even according to the existing law is part and parcel in the process of dispensation of justice. Therefore, there is nothing wrong in prescribing procedures for preliminary scrutiny and enquiry to the High Court. Instead of having some other Judge, it will be given to the High Court keeping in view the status of persons he has to deal with.

Mr. SPEAKER.—In that Ordinance of U. P., there is a clause that no person or no Judge can be appointed to function under the Bill except with his consent. There is a Bill in the Kerala Legislature practically on the same lines. They have provided in it that no person can be asked to serve except with his consent and agreement. Probably that is made to meet the requirements of Para 11 (b) (i) of Schedule II of the Constitution. What have you to say with respect to that provision?

Sri H. M. CHANNABASAPPA.—On that question, it is very easy for me to answer. If the Bill which was sponsored by Sri Nanje Gowda had received the recommendation of the Governor, just as it was done in the case of the Uttar Pradesh Bill, then there would have been no difficulty. That Bill professes to appoint a separate institution to go into the matter. And that is why, a separate Judge, independent of the forces of Government, has to be appointed. It should be done in a certain manner. Even in regard to the investigation, there it is provided that the Special Vigilance Commission is not subordinate to the

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Government; it is independent in all respects. Therefore, in order to create an independent agency, special provisions have been made. Here also, the Bill was a replica of that Bill and almost all the provisions of that Bill had been incorporated. Had only the Governor given consent and if our Government had helped in that matter, there would have been no difficulty. Now we do not intend to appoint any Special Officer for investigation. Since we do not propose to appoint a Special Judge for this purpose, the question of getting the President's or Governor's approval for the appointment of any person, does not arise.

SRI K. H. PATIL.—Sir, it is good a very and an elaborate decision that has been given by you on 18th August 1969 in the case of the admissibility of the Mysore Agricultural Produce Marketing (Regulation) (Amendment) Bill, 1969. The Ruling reads as:

> "I am not going to interpret the Constitution and the provisions thereof. The function of interpreting the law belongs to the Judiciary and not to the Legislature. Therefore whenever there is difference in the interpretation of a particular Constitutional provision, I think the best forum for the interpretation belongs to the Judiciary and not to either this House or to me. But whenever an objection under certain provisions are pleaded against the introduction or consideration of any Bill or measure that comes before me, it is for the Chair to find out *prima facie* whether there is anything in the Bill which contains errors or certain patent facts which attract the provisions of the Constitution.....I am not going to interpret the rule or constitutional provision..."

This ruling was given when an objection was raised to the introduction of the Mysore Agricultural Produce Marketing (Regulation) (Amendment) Bill, 1969 by the Hon. Minister for Development and when the Hon. Minister for Parliamentary Affairs intervened.

MR. SPEAKER.—Is it the suggestion of the Hon. Member that the Chair in this case should not interpret the constitutional provisions?

†ಶ್ರೀ ಎಂ. ನಾಗಪ್ಪ.—ಸ್ವಾಮಿ, ತಾವು ಈಗಾಗಲೇ ಈ ವಿಷಯದ ಬಗ್ಗೆ ಕೆಲವು ಗೈಡ್ ಲೈನ್ಸ್ ಕೊಟ್ಟಿದ್ದೀರಿ. ಅದೇ ವಿಷಯದಮೇಲೆ ನಾಲ್ಕು ಮಾತುಗಳನ್ನು ಸಭೆಯಮುಂದೆ ಇಡಲಕ್ಕೆ ಇಚ್ಛೆಪಡುತ್ತೇನೆ. ಪಬ್ಲಿಕ್ ಮೆನ್ ಇನ್‌ಕ್ಯೆರೀಸ್ ಬಿಲ್ ಏನಿದೆ ಅದರಲ್ಲಿರತಕ್ಕ ಕೆಲವು ಕಲಮು ಗಳನ್ನು ನೋಡಿದರೆ ಯಾವುದೇ ಒಂದು ಕಂಪ್ಲೇಂಟ್ ರಾಜ್ಯಪಾಲರಿಗೆ ಬಂದರೆ ರಾಜ್ಯಪಾಲರು ಅದನ್ನು ಹೈಕೋರ್ಟ್ ಚೀಫ್ ಜಸ್ಟಿಸ್ ಅವರಿಗೆ ಕಳಿಸತಕ್ಕುದು ಮತ್ತು ಅವರು ಯಾರಾದರು ಒಬ್ಬ ನ್ಯಾಯಾಧೀಶರನ್ನು ನೇಮಕ ಮಾಡಿ ಇನ್‌ವೆಸ್ಟಿಗೇಷನ್ ಮಾಡಿನಜೇಕು ಎನ್ನುವುದು ಉದ್ದೇಶ. ಈಗ ಈ ಬಿಲ್ ಕನ್‌ಸಿಡರೇಷನ್ ಸ್ಟೇಜಿಗೆ ಬಂದಿದೆ. ಕನ್‌ಸಿಡರೇಷನ್ನಿಗೆ ತೆಗೆದುಕೊಳ್ಳಬೇಕೋ, ಬೇಡವೋ ಎನ್ನುವ ಪ್ರಶ್ನೆ ಬಂದಿದೆ. ನಮ್ಮಾನ್ಯ ಪಾರ್ಲಿಮೆಂಟರಿ ಅಫೇರ್ಸ್ ಮಂತ್ರಿಗಳು ಎರಡು ನ್ಯೂನತೆಗಳನ್ನು ಸೂಚಿಸಿದ್ದಾರೆ. ಮೊದಲನೆಯದು ಆರ್ಟಿಕರ್ 207 (3) ಪ್ರಕಾರ ರಾಜ್ಯಪಾಲರ ಅಪ್ಪಣೆ ಅದಕ್ಕೆ ಬೇಕು; ಏಕೆಂದರೆ ಆ ಕಾಯಿದೆಯಿಂದ ಹಣಕಾಸಿನಮೇಲೆ ಖರ್ಚು ಮಾಡಬೇಕಾದ ಪರಿಸ್ಥಿತಿ ಬರುತ್ತದೆ; 207 (3) ಪ್ರಕಾರ ರಾಜ್ಯಪಾಲರ ಅಪ್ಪಣೆ ಅಥವಾ ಅಜ್ಞೆ ಇಲ್ಲದೆ ಅದನ್ನು ಈ ಸಭೆಯಲ್ಲಿ ಪರಿಶೀಲನೆಗೆ ತೆಗೆದುಕೊಳ್ಳುವುದಕ್ಕೆ ಬರುವುದಿಲ್ಲ ಎನ್ನುವುದು ಒಂದು

ಆಕ್ಷೇಪಣೆ. ಎರಡನೆಯದು ಹೈಕೋರ್ಟ್ ನ್ಯಾಯಾಧೀಶರನ್ನು ನೇಮಕ ಮಾಡಿದಮೇಲೆ ಅವರಿಗೆ ರಾಷ್ಟ್ರಾಂಗದಲ್ಲಿ ಸಂಬಳದ ಪರಿಮಿತಿ ಇದ್ದು ಅವರ ಕರ್ತವ್ಯಗಳನ್ನು ನಿರ್ವಹಿಸುತ್ತಿದ್ದಾರೆ. ಎರಡನೇ ಷೆಡ್ಯೂರ್‌ನ ಪ್ಯಾರ 11 (ಬ)ನಲ್ಲಿ 'ಆಕ್ಟ್ಯುಯರ್ ಸರ್ವಿಸ್'. ಎನ್ನುವುದಕ್ಕೆ ಅರ್ಥ ವಿವರಣೆಯನ್ನು ಕೊಟ್ಟಿದ್ದಾರೆ. ಅದನ್ನು ನೋಡಿದರೆ ಈಗಾಗಲೇ ಅಧ್ಯಕ್ಷರು ಈ ಮಾನ್ಯ ಸದಸ್ಯರ ಗಮನವನ್ನು ಆ ಶಬ್ದಗಳ ಕಡೆಗೆ ಸೆಳೆದು, ಅದಕ್ಕೆ ಹೆಚ್ಚಿಗೆ ಗಮನ ಕೊಡಬೇಕೆಂಬ ವಿಷಯವನ್ನು ತಿಳಿಸಿದ್ದಾರೆ.

Mr. SPEAKER.—The hon. Member should confine his remarks to the point raised by the Hon. Minister for Parliamentary Affairs. The explanation should pertain to that objection raised by the Hon. Minister.

ಶ್ರೀ ಎಂ. ನಾಗಪ್ಪ.—ಆ ದೃಷ್ಟಿಯಿಂದರೇ ನನ್ನ ಅಭಿಪ್ರಾಯವನ್ನು ಈ ನಥೆಯ ಗಮನಕ್ಕೆ ತರಲಕ್ಕೆ ಇಚ್ಛಿಪಡುತ್ತೇನೆ. ನಾವು ಬೇರೆ ಬೇರೆ ವಿಷಯಗಳಿಗೆ ಹೋಗುವುದಕ್ಕಿಂತ ಮುಂಚಿತವಾಗಿ ಎರಡನೇ ಷೆಡ್ಯೂಲಿನಲ್ಲಿ ಕೊಟ್ಟಿರುವ ವಿಷಯಗಳನ್ನು ಗಮನಿಸಬೇಕಾಗುತ್ತದೆ. ಆಕ್ಟ್ಯುಯರ್ ಸರ್ವಿಸ್ ಎಂದರೆ ಏನು ಎನ್ನುವುದನ್ನು ಎರಡನೇ ಷೆಡ್ಯೂರ್ ಪ್ಯಾರ 11 (ಬ) (1)ರಲ್ಲಿ ಕೊಟ್ಟಿದೆ. ನಮಗೆ ಎರಡನೆಯದು ಸಂಬಂಧವಿಲ್ಲ. ನಾವು ಈಗ ಈ ಬಿಲ್ಲಿನ ಪ್ರಕಾರ ಏನು ಕೆಲಸವನ್ನು ವಹಿಸುತ್ತಿದ್ದೇವೆ ಅದು ನ್ಯಾಯಾಧೀಶರ ಕರ್ತವ್ಯದ ಪರಿಮಿತಿಯಲ್ಲಿ ಬರುತ್ತದೆಯೇ ಅಥವಾ ಇಲ್ಲವೇ ಎನ್ನುವುದು ಮುಖ್ಯವಾದ ವಿಚಾರ. ಇಂಥ ಕೆಲಸವನ್ನು ನ್ಯಾಯಾಧೀಶರು ನಿರ್ವಹಿಸುವಾಗ ಅವರು ನ್ಯಾಯಾಧೀಶರು ಎಂಬುದಾಗಿ ಪರಿಗಣಿಸುತ್ತಾರೆಯೇ ಅಥವಾ ಇಲ್ಲವೇ ಎನ್ನುವ ಮಾತನ್ನು ನಾವು ನೋಡಬೇಕು.

6-00 P.M.

ಅವರಿಗೆ ಕೊಟ್ಟ ಕೆಲಸ ಜಡ್ಜ್ ಮಾಡುವ ಕೆಲಸವೆಂದು ಭಾವಿಸಿದರೆ ಆ ಪರಿಮಿತಿಯಲ್ಲಿ ಅದು ಬರುವುದು. ಈ ದಿವಸ ಜಡ್ಜ್ ಎದುರಿಗೆ ಯಾವುದಾದರೂ ವಿಷಯ ಬಂದಾಗ ಅವರು ಎವಿಡೆನ್ಸ್ ರಿಕಾರ್ಡ್ ಮಾಡುವುದು, ಸಮನ್ ಮಾಡುವುದು, ಸಾಕ್ಷಿ ತೆಗೆದುಕೊಳ್ಳುವುದು ಮುಂತಾದ ಕೆಲಸಗಳನ್ನು ಮಾಡಿ ಕಡೆಗೆ ಜಡ್ಜ್‌ಮೆಂಟ್ ಕೊಡುವರು. ಇದಕ್ಕೆ ದೇಶದಲ್ಲಿ ಎರಡು ಮುಖ್ಯವಾದ ಪ್ರೊಸೀಜರ್ ಇದೆ, ಮೊದಲನೆಯದು ಸಿವಿಲ್ ಪ್ರೊಸೀಜರ್, ಎರಡನೆಯದು ಕ್ರಿಮಿನಲ್ ಪ್ರೊಸೀಜರ್. ಸಿವಿಲ್ ಕೇಸುಗಳಲ್ಲಿ ಸಿವಿಲ್ ಪ್ರೊಸೀಜರ್, ಕ್ರಿಮಿನಲ್ ಕೇಸುಗಳಲ್ಲಿ ಕ್ರಿಮಿನಲ್ ಪ್ರೊಸೀಜರ್ ಇರುವುದು. ಸಾಕ್ಷಿ ತೆಗೆದುಕೊಳ್ಳುವ ವಿಚಾರ ಎವಿಡೆನ್ಸ್ ಆಕ್ಟಿನಲ್ಲಿದೆ. ಈ ಮೂರೂ ಇಂದು ಗ್ರೆಡ್ ಮಾಡುವುವು, ಇಂಥ ಕೆಲಸಗಳನ್ನು ಇಂದು ಡಿ. ಸಿ. ಗೆ ಕೊಡಲ, ಯಾರಿಗೇ ಕೊಡಲ ಕ್ಯಾಸಿ ಜ್ಯುಡಿಷಿಯರ್ ಎಂದು ಹೇಳುತ್ತೇವೆ. ಎಕ್ಸಿಕ್ಯುಟಿವ್ ಆಫೀಸರಾಗಿ ಕೆಲಸ ಮಾಡುವವರಿಗೆ ಈ ಕೆಲಸ ಕೊಟ್ಟರೆ ಅವರು ಒಬ್ಬ ಜಡ್ಜ್ ಮಾಡಬೇಕಾದ ಕಾರ್ಯ ಮಾಡಬೇಕಾಗುವುದು. ಅವರಿಗೆ ಅಧಿಕಾರ ಕೊಟ್ಟರೆ ಅದಕ್ಕೆ ತಕ್ಕಂತೆ ಅವರು ಕೆಲಸ ಮಾಡುವರು. ಕುರ್ಚಿಯಮೇಲೆ ಯಾರಿದ್ದಾರೆಂದು ನೋಡುವುದು ಧರ್ಮವಲ್ಲ. ಈ ಕೆಲಸ ಜಡ್ಜ್ ಮಾಡಬಹುದು ಅಥವಾ ಬೇರೆ ಯಾರಾದರೂ ಮಾಡಬಹುದು. ಆ ದೃಷ್ಟಿಯಿಂದ ಸ್ಪಷ್ಟವಾಗಿ ಈ ಬಿಲ್ಲಿನಲ್ಲಿ ಹೇಳಿದೆ, ಅವರು ಸಮನ್ ಯಾವ ಪ್ರಕಾರ ಇಷ್ಯೂ ಮಾಡಬೇಕು ಎಂಬುದು ನಮೂದಾಗಿದೆ. ಸಿವಿಲ್ ಪ್ರೊಸಿಜರ್ ಕೋಡಿನ ಪ್ರಕಾರ ಕೆಲಸ ಮಾಡಬೇಕು. ಇನ್ನು ಕೆಲವು ಪ್ರಾವಿಷನ್ಸ್ ಸಹ ಇವೆ. ಸಿವಿಲ್ ಕೋರ್ಟ್ ಆಕ್ಟಿನ ಪ್ರಕಾರ ಕೆಲಸ ನಡೆಸಬೇಕು. ನಮ್ಮಲ್ಲಿ ಎರಡು ಪ್ರೊಸೀಜರ್ ಇವೆ. ಈ ಬಿಲ್ಲನ್ನು ತಂದವರಿಗೆ ಸಿವಿಲ್ ಪ್ರೊಸೀಜರ್ ನಡೆಸಬೇಕೆಂಬ ಉದ್ದೇಶವಿದೆ, ಸಿವಿಲ್ ಪ್ರೊಸೀಡಿಂಗ್ಸ್ ಎಂದು ತಿಳಿದುಕೊಳ್ಳಬೇಕು ಎಂಬ ಉದ್ದೇಶವಿದೆ. ಅದು ಸ್ಪಷ್ಟವಾಗಿದೆ. ಇದರಲ್ಲಿ ಎರಡು ಅಭಿಪ್ರಾಯಗಳಿಲ್ಲ. ಆಮೇಲೆ ಅವರು ಕೋರ್ಟಿನಲ್ಲಿ ಕೊಡುವ ಆಜ್ಞೆ ಚಲಾವಣೆಗೆ ಬರಬೇಕು. ಅದು ಕಾರ್ಯರೂಪಕ್ಕೆ ಬರಬೇಕು. ಒಂದು ವರದಿಯನ್ನು ರಾಜ್ಯಪಾಲರಿಗೆ ಕಳಿಸುವರು, ಎಕ್ಸಿಕ್ಯೂಷನ್ ಪ್ರೊಸೀಡಿಂಗ್ಸ್ ಸೆಪರೇಟ್ ಆಗುವುದು. ಇಲ್ಲಿ ಕೊಟ್ಟ ಆಜ್ಞೆ ಕ್ರಿಮಿನರ್ ಚಾರ್ಜ್ ಆಗಿ ಕೋರ್ಟ್‌ನ ಮುಂದೆ ಹೋಗುವುದು. ಅದರ ಬಗ್ಗೆ ಚರ್ಚೆ ಬೇಡ. ತರುವಾಯ ನಿರ್ಣಯವಾಗುವುದು. ನಾವು ಪಬ್ಲಿಕ್ ಮೆನ್ ಇನ್ ಕ್ವೆಶ್ಚನ್ ಬರ್ ಪ್ರಕಾರ ಜಿಲ್ಲೆಗೆ ಅಥವಾ ಯಾರಿಗೇ ಆಗಲ ಕೊಡುವ ಅಧಿಕಾರ ಜುಡಿಷಿಯರ್ ಫಂಕ್ಷನ್ಸ್.

Mr. SPEAKER.—If the High Court Judge or District Judge makes a recommendation, does it mean that it is an order enforceable!

ಶ್ರೀ ಎಂ. ನಾಗಪ್ಪ.—ಹೌದು, ಇದರಲ್ಲಿ ಸಿವಿಲ್ ಪ್ರೊಸೀಜರ್ ಬರುವುದು. ಆದರೆ ಆ ರೆಕ್ ಮೆಂಡೇಷನ್ ಸರಕಾರ ಒಪ್ಪಿಕೊಳ್ಳಬೇಕು ಎಂದಿದೆ. ಅದು ಎಕ್ಸಿಕ್ಯೂಟ್ ಆಗುವುದಿಲ್ಲ. ಬಿಲ್ಲಿನಲ್ಲಿ ಇಲ್ಲಿ ತೀರ್ಪುಕೊಟ್ಟರೆ ಕ್ರಿಮಿನಲ್ ಚಾರ್ಜ್‌ಷೀಟ್ ಹಾಕಲೇಬೇಕು ಎಂದಿದೆ. The verdict of the Judge in respect of this is final. That has to be executed. The time spent by a Judge on duty as a Judge. ಅದನ್ನು ಈ ದಿವನ ಹೇಳುವುದು. ಹೈಕೋರ್ಟ್ ಡಿಕ್ರಿಯಾದರೆ ಮುನ್ಸೀಫ್ ಕೋರ್ಟ್‌ಗೆ ಎಗ್ಸಿಕ್ಯೂಟ್ ಮಾಡುವುದು ಅಥವ ಜ್ಯುರಿಸ್‌ಡಿಕ್‌ಷನ್ ಇರುವ ಕೋರ್ಟ್ ಎಗ್ಸಿಕ್ಯೂಟ್ ಮಾಡುವುದು. ಕೊಟ್ಟ ಆಜ್ಞೆ ಜಾರಿಗೆತರುವ ವಿಧಾನದಿಂದ ಜ್ಯುಡಿಷಿಯಲ್ ಕೆಲಸವಲ್ಲವೇ ಎಂಬುದನ್ನು ತಿಳಿದುಕೊಳ್ಳಬಹುದು. ಜಡ್ಜ್ ಮಾಡುವ ಕೆಲಸ ನಿರ್ಣಯಾತ್ಮಕವಾಗಿರ ಬೇಕು. ಬಿಲ್ಲಿನಲ್ಲಿ ಇರುವ ಶಬ್ದಗಳು ಹೀಗಿವೆ : ''ಚ್ಯೆಂ ಸ್ಪೆಂಟ್ ಬೈ ಎ ಜಡ್ಜ್ ಆನ್ ಡ್ಯೂಟಿ''.

Mr. SPEAKER.—I have gone deep into this matter. Is there any decision of the Supreme Court or High Court to the effect that enquiries made by the Judge are not judicial functions?

Sri M. NAGAPPA.—No. I have gone through it. I brought to the notice of the House the reports submitted under the Commission of Enquiries Act and the reports given under Public Men Enquiry Act. ಕಮಿಷನ್ ಆಫ್ ಎನ್‌ಕ್ವೈರಿ ಕೊಟ್ಟರುವುದು ಸರಕಾರ ಒಪ್ಪಿದರೆ ಮಾತ್ರ ಜಾರಿಗೆ ಬರುವುದು He has given a final finding under the Public Men Enquiries Bill. ರಾಜ್ಯ ಪಾಲರು ಒಪ್ಪಿದರೆ ಜಾರಿಯಲ್ಲಿ ತರಬೇಕು ಎಂದಿದ್ದರೂ ಬಿರ್ ಏತ್‌ದ್ರಾ ಮಾಡಿ ಎಂದು ಹೇಳುವು ದೇಕೆ? ಆಕ್ಟ್ ಪ್ರಕಾರ ಕಮಿಷನರ್ ಆಫ್ ಇನ್‌ಕ್ವೈರೀಸ್ ಯಾರೇ ಆಗಲಿ, ಜಡ್ಜಿಯಾಗಲಿ, ಕಾರ್ಯ ಮಾಡಿದರೆ ಅದನ್ನು ಅಕ್ಸೆಪ್ಟ್ ಮಾಡಿಕೊಳ್ಳುವ ಅಧಿಕಾರಿ ಬೇರೆ. ಸರಕಾರ ಒಪ್ಪದೆ ಇರ ಬಹುದು. ಸುಪ್ರೀಂ ಕೋರ್ಟ್ ಜಡ್ಜಿಯ ರೆಕಮೆಂಡೇಷನ್ ಸರಕಾರ ಒಪ್ಪಬಹುದು ಅಥವ ಬಿಡ ಬಹುದು. ಇಲ್ಲಿ ಕೊಡುವುದು ರೆಕ್‌ಮೆಂಡೇಷನ್ ಅಲ್ಲ, ಫೈಂಡಿಂಗ್. ಜಡ್ಜ್‌ಮೆಂಟ್ ಕೊಟ್ಟರೆ ಎಗ್ಸಿಕ್ಯೂಟ್ ಮಾಡುವ ಅಧಿಕಾರ ಇದರಲ್ಲಿದೆ. ಅವನ್ನು ಸ್ಪಷ್ಟಪಡಿಸಿದ್ದಾರೆ. 52ರ ಎನ್‌ಕ್ವೈರಿ ಆಕ್ಟ್ ಪ್ರಕಾರ ಜಡ್ಜಿಗೆ ಮಹತ್ವವಿದೆ. ಅವರು ಕೊಡುವುದು ಜಡ್ಜ್‌ಮೆಂಟ್ ಎಂಬುದು ನನ್ನ ಅಭಿಪ್ರಾಯ.

ಈ ಬಿಲ್ಲಿನ ಪ್ರಕಾರ ಸೆಕ್ಷನ್ 13 ರಲ್ಲಿ ಕೊಡತಕ್ಕದ್ದು ಫೈನಲ್ ಫೈಂಡಿಂಗ್ ಅಂತ ಹೇಳಿ ನಾನು ತಿಳಿದುಕೊಂಡಿದ್ದೇನೆ. ಯಾರನ್ನು ನಾವು ನೇಮಕ ಮಾಡುತ್ತೇವೆ, ಅವರು ಏನು ಫೈಂಡಿಂಗ್ ಕೊಡುತ್ತಾರೆ ಅದು ಸಬ್‌ಸೆಕ್ಷನ್ 4 ರಲ್ಲಿ ಇದೆ :

> ''Where a finding referred to in sub-section (2) or sub-section (3) is recorded by the Judge, the Vigilance Commissioner shall take all necessary steps for the prosecution of the person concerned, including, where necessary, the seeking of the sanction for such prosecution.''

ಕ್ರಿಮಿನಲ್ ಪ್ರೊಸಿಜರ್ ಕೋಡ್‌ನ 197ನೇ ಸೆಕ್ಷನ್‌ನಲ್ಲಿರತಕ್ಕ ಎಲ್ಲ ಅಧಿಕಾರ ಇದರಲ್ಲಿ ಒಳಗೊಂಡಿದೆ ಅದಕ್ಕೇ ನಾನು ಹೇಳಿದ್ದು ಈ ಫೈಂಡಿಂಗ್ ವಿಜಿಲೆನ್ಸ್ ಕಮಿಷನರು ಮಾಡಬಹುದು ಅಥವಾ ಫಸ್ಟ್ ಕ್ಲಾಸ್ ಮ್ಯಾಜಿಸ್ಟ್ರೇಟರು ಮಾಡಬಹುದು, ಯಾರು ಬೇಕಾದರೂ ಮಾಡಬಹುದು. ಇದನ್ನು ಒಪ್ಪ ಬೇಕಾದರೆ ಇದು ಈಕ್ವಿಟಬಲ್ಲೇ ಎಂಬುದನ್ನು ನೋಡಬೇಕು. 13ರಲ್ಲಿ ಇದು ಸ್ಪಷ್ಟವಾಗಿದೆ. ಇದರಿಂದ ಒಂದು ಅಭಿಪ್ರಾಯ ಸ್ಪಷ್ಟವಾಗುತ್ತದೆ; ಏನೆಂದರೆ ಇದು ಒಂದು ಜ್ಯುಡಿಷಿಯಲ್ ವರ್ಕ್. ಇದನ್ನು ಎನ್‌ಕ್ಯುಟ್ ಮಾಡತಕ್ಕ ಪರಿಸ್ಥಿತಿಯಲ್ಲಿದ್ದೇವೆ ಎಂಬ ಮಾತು ಸ್ಪಷ್ಟವಾಗಿದೆ. ಇದು ಜ್ಯುಡಿಷಿಯಲ್ ಆಕ್ಟ್ ಅಂತ ಒಪ್ಪಿಕೊಂಡರೆ ಷೆಡ್ಯೂಲ್ 2 (ಡಿ) 11 (ಎ) ನಲ್ಲಿ ಬರತಕ್ಕ ಏನೊಂದು ತೊಡರು ಇದೆ ಅದು ಬರುವುದಿಲ್ಲ ಎಂದು ನಾನು ಭಾವನೆ ಮಾಡಿಕೊಂಡಿದ್ದೇನೆ. ಇನ್ನು ಈ ಮಾನ್ಯ ಸಭೆಯ ಅಭಿಪ್ರಾಯವೇನೆಂದರೆ ಆರ್ಟಿಕಲ್ 246 ರೆಡ್ ವಿತ್ 7ತ್ ಷಡ್ಯೂರ್ ಲಿಸ್ಟ್ 1-2-3 ಆ ಪರಿಮಿತಿಯಲ್ಲಿ ಇದು ಬರುತ್ತಾ ಇದ್ದರೆ, ಇಂತಹ ಒಂದು ಕಾಯಿದೆ ಮಾಡಲಕ್ಕೆ ಅಧಿಕಾರ ಇದೆಯೇ ಇಲ್ಲವೇ ಎಂಬ ಮಾತನ್ನು ನಾವು ನೋಡಬಹುದು. ಮಾನ್ಯ ಮಿನ್ಸ್ಟರಾದ ನಂಜೇಗೌಡರು ಆರ್ಟಿಕಲ್ 246ನ್ನು ಓದಿ ತೋರಿಸಿದ್ದಾರೆ. ಅದರ ಪ್ರಕಾರ ಇವತ್ತು 2ನೇ ಷೆಡ್ಯೂರ್‌ನಲ್ಲಿ ಕೊಟ್ಟ ಎಲ್ಲ ಐಟಂಗಳ ಬಗ್ಗೆ ಕಾಯಿದೆ ಮಾಡತಕ್ಕ ಅಧಿಕಾರ ಈ ಮಾನ್ಯ ಸಭೆಗೆ ಉಂಟು. ಅದರಂತೆ ಕನ್‌ಕರೆಂಟ್

ಲಸ್ಟ್‌ನಲ್ಲಿ ಇರತಕ್ಕ ಐಟಂಗಳ ಬಗ್ಗೆ ಸಹ ಕಾಯಿದೆ ಮಾಡತಕ್ಕ ಅಧಿಕಾರ ನಮಗೆ ಉಂಟು. ಇಲ್ಲಿ ಒಂದು ಅಂಶದಲ್ಲಿ ಭಿನ್ನಾಭಿಪ್ರಾಯ ಇದೆ. ಎರಡನೇ ಲಸ್ಟ್ ನೋಡೋಣ—ಅಡ್ಮಿನಿಸ್ಟ್ರೇಷನ್ ಆಫ್ ಜಸ್ಟೀಸ್, ಇದರ ಬಗ್ಗೆ ಮಾನ್ಯ ಮಂತ್ರಿಗಳು ಅಬ್ಜಕ್ಷನ್ ತೆಗೆದುಕೊಂಡಿದ್ದಾರೆ. ಇಲ್ಲಿ ಈ ಶಬ್ದಗಳು ಅಷ್ಟು ಪಾ ಮುಖ್ಯವಲ್ಲ, ಈಗ ಹೈಕೋರ್ಟ್ ಆಕ್ಟ್ ಮಾಡಿದ್ದಾರೆ. ಈಗ ಇರತಕ್ಕ ಕಾಯಿದೆ ಅಡ್ಮಿನಿಸ್ಟ್ರೇಷನ್ ಆಫ್ ಜಸ್ಟೀಸ್‌ನಲ್ಲಿ ಬರುವುದಿಲ್ಲ ಎಂದರೆ ಒಂದು ವೇಳೆ ಇದರ ಬಗ್ಗೆ ಮುಂದೆ ಕಂಪ್ಲೆಂಟ್ ಬಂದರೆ ಕ್ರಿಮಿನಲ್ ಕೋರ್ಟಿಗೆ ಒಯ್ಯತಕ್ಕ ಮಾರ್ಗ ಹಿಡಿದರೆ the High Courts Act comes under the Administration of Justice ; the Civil Courts Act comes under the Administration of Justice. ಅದು ಪೀನರ್ ಕೋಡ್ ಆಗಬಹುದು ಅಥವಾ ಯಾವುದೇ ಆಗಬಹುದು. ಸೇಲ್ಸ್ ಟ್ಯಾಕ್ಸ್ ಆಕ್ಟ್‌ನಲ್ಲಿ ಯಾವುದೇ ಪೀನರ್ ಸೆಕ್ಷನ್ ತಂದರೂ ಅದನ್ನು ಆರ್ಟಿಕರ್ 246, ಷೆಡ್ಯೂಲ್ 2 ಸೀರಿಯಲ್ ನಂಬರ್ 54 ಅಂತ ಹೇಳಿ ಓದುವುದಿಲ್ಲ. ಪೀನರ್ ಪನಿಷ್‌ಮೆಂಟ್ ಕೊಡತಕ್ಕ ಅಧಿಕಾರ ಅಂತಹ ಕಾಯಿದೆಯಲ್ಲಿ ಒಂದು ಪ್ರೊವಿಜನ್ ಆಗಿ ಇದ್ದೇ ಇರುತ್ತದೆ. ಅಂತಹ ಅವಕಾಶ ಇದರಲ್ಲಿ ಇದೆಯೇ ಇಲ್ಲವೇ ಎಂಬುದನ್ನು ನೋಡುವುದು ಎಷ್ಟೋ ಅಷ್ಟೆ.

Mr. SPEAKER.—The hon. Member Sri Channabasappa referred to entry 65 of List II ; probably he means that.

ಶ್ರೀ ಎಂ. ನಾಗಪ್ಪ.—ಇದು ಮುಖ್ಯವಾದದ್ದು. Jurisdiction and powers of courts except the Supreme Court with respect to any of the matters in the List. ಐಟಂ ನಂಬರ್ 1-64 ರಲ್ಲಿ ಯಾವುದಾದರೂ ಕಾಯಿದೆ ಮಾಡುತ್ತಾ ಇದ್ದರೆ ಜ್ಯೂರಿಸ್‌ಡಿಕ್ಷನ್ ವೆಸ್ಟ್ ಮಾಡಬೇಕಾಗಿದ್ದರೆ ಅಂತಹ ಒಂದು ಅಧಿಕಾರವನ್ನು ಕೋರ್ಟಿಗೆ ಕೊಡಬೇಕಾದರೆ ಅದನ್ನು ಆ ಕಾಯಿದೆಯಲ್ಲಿ ಮಾಡಬಹುದು. ಒಂದು ವಿಷಯ ಹೇಳುತ್ತೇನೆ ಈಗ ರ್ಯಾಂಡ್ ರಿಫಾರಂನ್ಸ್ ಆಕ್ಟ್ ಮಾಡಿದ್ದೇವೆ, ಅದರಲ್ಲಿ ಹೈಕೋರ್ಟಿಗೆ ರಿವಿಜನ್ ಅಧಿಕಾರ ಕೊಟ್ಟಿದ್ದೇವೆ. In some of the cases the Tribunals will make a reference to the High Court to give a finding. The High Court will sit and give a finding on the reference made by different Tribunals. ಅದೇ ರೀತಿ ಸೇಲ್ಸ್‌ಟ್ಯಾಕ್ಸ್ ಆಕ್ಟ್‌ನಲ್ಲೂ ಕೂಡ ಇದೆ. ಬೇಕಾದಷ್ಟು ಉದಾಹರಣೆಗಳನ್ನು ಬೇಕಾದರೆ ಕೊಡುತ್ತೇನೆ. ಅದರಲ್ಲೂ ಸಹ ಅಪೀಲು ಮತ್ತು ರಿವಿಜನ್‌ಗೆ ಹೈಕೋರ್ಟಿಗೆ ಹೋಗುತ್ತೇವೆ. ಮತ್ತು ಇನ್ನು ಕೆಲವು ಕೇಸುಗಳಲ್ಲಿ ಟ್ರಿಬ್ಯೂನರ್ ಫೈಂಡಿಂಗ್ಸ್ ಕೊಡಿ ಎಂದು ಹೇಳುತ್ತೇವೆ. ಅದೇ ರೀತಿ ಕೆಲವೊಂದು ಅಧಿಕಾರ ಹೈಕೋರ್ಟು, ಟ್ರಿಬ್ಯೂನರ್‌ಗಳಿಗೆ ಕೊಡುವುದು, ಕಾಯಿದೆ ಮೂಲಕ ಮಾಡುವುದಕ್ಕೆ ಈ ಶಾಸನಸಭೆಗೆ ಅಧಿಕಾರ ಇದೆ. We confer jurisdiction on the High Court to function in such and such manner as provided under this Act. ನಾನು ಈಗ ತಿಳಿದುಕೊಂಡಮಟ್ಟಿಗೆ ಈ ತರಹದಿಂದ ಜ್ಯೂರಿಸ್‌ಡಿಕ್ಷನ್ ಕ್ರಿಯೇಟ್ ಮಾಡತಕ್ಕ ಅಧಿಕಾರ ಈ ಮಾನ್ಯ ಸಭೆಗೆ ಉಂಟು ಎಂದು ಭಾವಿಸುತ್ತೇನೆ.

ಇನ್ನು ಇದರ ಬಗ್ಗೆ ಅಬ್ಜಕ್ಷನ್ ಇರುವುದೇನೆಂದರೆ ಇದರಲ್ಲಿ ಕೆಲವು ಹಣಕಾಸಿನ ವಿಷಯ ಬರುತ್ತದೆ ಎಂದು. 207 (3)ರ ಪ್ರಕಾರ ಗವರ್ನರು ಅವರ ಒಪ್ಪಿಗೆಯನ್ನು ಕೊಡಬೇಕು ಅಂತ ಅನ್ನುವುದು. ಅವರು ಇಲ್ಲಿ ತರತಕ್ಕ ಪ್ರತಿಯೊಂದು ಬಿಲ್ಲಿನಲ್ಲೂ ಸಹಿತ ಒಬ್ಬರಲ್ಲ ಒಬ್ಬ ಅಧಿಕಾರಿಗಳನ್ನು ಹೆಚ್ಚಾಗಿ ನೇಮಕ ಮಾಡುತ್ತಾ ಇರುತ್ತಾರೆ, ಇಂತಹ ಅನೇಕ ಮಸೂದೆಗಳನ್ನು ತೋರಿಸುತ್ತೇನೆ. ಅವರೇ ವಾದಿಸಿದ್ದಾರೆ ಇದರಲ್ಲಿ ಯಾವ ತರಹದ ತೊಡಕೂ ಇಲ್ಲ ಎಂಬ ವಾದವನ್ನು ಅವರು ಮಾಡುತ್ತಾ ಇದ್ದುದನ್ನು ಅನೇಕ ಸಲ ಕೇಳಿದ್ದೇನೆ. ಈ ಬಗ್ಗೆ ತಾವು ಕೊಟ್ಟ ಅನೇಕ ರೂಲಿಂಗ್‌ಗಳು ಇವೆ. ಮಾನ್ಯ ನಂಜೇಗೌಡರು ಅಂಥ ಒಂದು ರೂಲಿಂಗನ್ನು ತಮ್ಮ ಗಮನಕ್ಕೆ ತಂದಿದ್ದಾರೆ. That objection has been raised by some Minister in the Parliament and the Deputy Speaker there was pleased to rule it out. ಆದ್ದರಿಂದ ಇದರಲ್ಲಿ ಅಂತಹ ಒಂದು ಭಾರಿ ದೊಡ್ಡ ಅಬ್ಜಕ್ಷನ್ ಏನೂ ಬರಲಾರದು ಎಂದು ನಾನು ತಿಳಿದುಕೊಂಡಿದ್ದೇನೆ. ಈ ಮಸೂದೆಯನ್ನು ಪರಿಶೀಲನೆಗೆ ತೆಗೆದುಕೊಳ್ಳಲಿಕ್ಕೆ ಯಾವ ತರ ಹದ ತೊಂದರೆಯೂ ಇಲ್ಲ.

ಕೊನೆಯದಾಗಿ ಒಂದು ಅಂಶವನ್ನು ತಮ್ಮ ಗಮನಕ್ಕೆ ತರುತ್ತೇನೆ, ಈ ಮುಂಚಿತವಾಗಿ ತಾವು ಒಂದು ರೂಲಿಂಗ್‌ನ್ನು ಕೊಟ್ಟಿದ್ದೀರಿ. ತಮ್ಮ ರೂಲಿಂಗ್‌ನ್ನು ಉಲ್ಲಂಘನೆ ಮಾಡುವುದಕ್ಕೆ ನಾನು ಹೋಗುವುದಿಲ್ಲ, ತಾವು ಇಂಟರ್‌ಪ್ರಿಟೇಷನ್ ಮಾಡಲಿಕ್ಕೆ ಹೋಗಕೂಡದು, ಪ್ರೈಮಾಫೇಸಿ ಇದೆಯೇ ಇಲ್ಲವೇ ಎಂಬುದನ್ನು ನೋಡಬೇಕು. ಸೆಕ್ಷನ್ ಓದಿದರೆ ಏನು ಅರ್ಥ ಬರುತ್ತಡೆ ಎಂಬುದನ್ನು

(ಶ್ರೀ ಎಂ. ನಾಗಪ್ಪ)

ಮಾತ್ರ ನೋಡಬಹುದು. ಇಂಟರ್‌ಪ್ರಿಟೇಷನ್ ನಾವು ಮಾಡುವುದಲ್ಲ, ಅದು ಜ್ಯುಡೀಷಿಯರಿ ಫಂಕ್ಷನ್‌ನಲ್ಲಿ ಬರುವುದಿಲ್ಲ, 207 ಇದಕ್ಕೆ ಅನ್ವಯವಾಗುತ್ತದೆ ಎಂದು ಅವರು ಹೇಳುತ್ತಾರೆ, ಇದು ಅವರ ವಾದ, ನನ್ನದಲ್ಲ. Interpretation of the Constitution is not the function of the Speaker. ಆದ್ದರಿಂದ ಹೈಪೊಥೆಸಿಸ್ ಜ್ಯೂಡಿಷಿಯರ್ ಫಂಕ್ಷನ್ ಇದೆಯೇ ಇಲ್ಲವೇ ಅಥವಾ ಎಜುವಾಗಿಯೂ ಅಡೀಷನರ್ ಜರ್ಜ್ ಆಗುತ್ತದೆಯೇ ಇಲ್ಲವೇ ಎಂಬುದನ್ನು ವಿಶಾಲ ದೃಷ್ಟಿಯಿಂದ ನೋಡಿ ನಿರ್ಣಯ ಮಾಡಿ ಮಾನ್ಯ ಮಂತ್ರಿಗಳು ಮಾಡಿದ ಅಬ್ಜೆಕ್ಷನನ್ನು ತಾವು ತಳ್ಳಿಹಾಕುತ್ತೀರಿ ಎಂದು ನಾನು ಭಾವಿಸಿ ಮಾನ್ಯ ನಂಜೇಗೌಡರ ಈ ಬರ್‌ನ್ನು ಪರ್ಯಾಲೋಚನೆಗೆ ತೆಗೆದುಕೊಳ್ಳಲಕ್ಕೆ ಪರವಾನಿಗಿ ಕೊಡುತ್ತೀರಿ ಎಂದು ನಿಂಬಿ ನನ್ನ ಭಾಷಣವನ್ನು ಮುಗಿಸುತ್ತೇನೆ.

Sri K. PUTTASWAMY (Minister for Law, Labour and Parliamentary Affairs).—Sir, I listened to the arguments of the hon'ble members with rapt attention. They have been able to explain so many points advanced by me, but I am sorry to say that they have missed the relevant points. I wish I had taken some more time of the House at the beginning and made myself very clear. I should have taken the House through some of the clauses of the Bill and pointed out how a Judge of the High Court or the Chief Justice of the High Court or a District and Sessions Judge is called upon to do the work of investigation, the work that is ordinarily done by the police. If I had done so, perhaps it would have been much better. The House would have been able to appreciate my arguments better. I should have done so. I am sorry for not doing so. I thought that the hon'ble members had gone through the several provisions of the Bill. If only the provisions of the Bill are read through, I do not think that it would require any argument on my part to convince the hon'ble members that this Bill does not seek to assign judicial functions to Judges and that this Bill is expecting the Judges to play the role of investigating officers. I think it would be much better I do that now.

In clause 2 (a) 'accusation' is defined as follows:

> "'Accusation' or 'accusation to which this Act applies' means any imputation of misconduct against a person who holds or has held, in Mysore in relation to his position as such..."

You were pleased to point out that the word 'misconduct' has not been defined. I shall not now try to dwell at length on that point.

Then I come to clause 3 which says:

> "Any person may present a petition to the Governor making a request for inquiry into an accusation, enclosing with the petition his affidavit in support thereof, verified before a Magistrate, and a treasury receipt showing deposit of a sum of Rs. 1,000 to be available for disposal under this Act."

This clause envisages presentation of an application to the Governor and it should be accompanied with a treasury receipt showing deposit of a sum of Rs. 1,000. So far it is all right. Then what is the Governor expected to do?

Clause 4 says :

"The Governor shall, as soon as he entertains a petition under section 3, refer the accusation made therein for preliminary scrutiny to a Judge referred to as hereinafter provided."

Some of the hon'ble members here are very experienced Advocates, practising before courts. I just want to know whether there is any parallel anywhere of referring a complaint for scrutiny by a Judge. A Judge is not expected to scrutinise. He is only expected to decide. If his decision is not taken up in appeal to a higher authority, that binds the parties and it is enforceable.

Then sub-clause (3) of clause 4 says :

"On a request in this behalf being made by the Governor, the Chief Justice shall, for the purpose of making the scrutiny, refer the matter to a Judge as follows..."

Now, there is a duty cast on the Chief Justice to refer the matter to a Judge. Then sub-clause (4) says :

"For so long as a Judge referred to under this section continues to be seized of a reference in respect of the same person shall ordinarily be made to him."

So it has to be transferred to him and he has no other way. The Chief Justice has to transfer it. Then the preliminary scrutiny starts. Clause 5 says ;

"The Judge referred to under section 4 shall scrutinize the accusation informally and expeditiously and may—

(*a*) scrutinise not only the accusation referred to him, but any other accusation appearing to him to be connected therewith or arising out of the scrutiny ;

(*b*) require any Minister or officer of the State Government or any other person, who in his opinion is able to furnish information or produce any documents relevant to the scrutiny, to furnish any such information or produce any such documents ;"

Then clause 6 deals with the result of scrutiny. Sub-clause (2) says :

"In all other cases, the Judge shall refer the accusation for investigation to the Vigilance Commissioner and inform the Governor accordingly."

What is the judicial function that he has to discharge ? After giving a decision as to whether there is a *prima facie* case or not for taking up for investigation, he has to refer the matter to the Vigilance Commissioner for investigation.

(SRI K. PUTTASWAMY)

6-30 P.M.

Sir, so far, I can only draw a parallel of a police receiving a complaint and forwarding it to the Court. When the Police receive a complaint and forward it to the Court, that becomes the First Information Report. Till now, what is it that the Chief Justice and a High Court Judge, who occupies the highest position in the Judiciary, have done ? They have received a complaint and have forwarded it to the Vigilance Commission. That means, that the Judges have done only the work of a Station House Officer. Then, the Vigilance Commissioner investigates and reports the result thereof confidentially to the Governor. Chapter III of this Bill deals with Inquiry Judge ; Clause 8 says :

"(1) The Governor shall, as soon as he receives a report under section 7, refer it to a Judge as hereinafter provided.

(2) on a request in this behalf being made by the Governor, the Chief Justice shall refer it to a Judge as follows :—

(*a*) Where the accusation is against a person who on the date of the request holds the office of a Minister or is against the conduct of a person having relation to his position as Minister, the Chief Justice shall refer the matter to a sitting Judge of the High Court of Judicature at Bangalore.

(*b*) In any other case, the Chief Justice shall refer to a serving District Judge having jurisdiction."

Sir, again the Governor receives the report and refers it to the Chief Justice of the High Court. The Chief Justice depending upon the persons involved, has to refer it to a Judge of the High Court in the case of a Minister or to a Judge of the District Court in other cases. I would like to ask what are all these functions? What is it that he does? He holds an enquiry. In Clause 10, the procedure of enquiry is given. It says :

"10. Procedure of Enquiry.—(1) The Judge shall, subject to the provisions of this Act and of any rules made thereunder, has power to regulate his own procedure, including the fixin of the place and time of his sitting.

(2) He shall while holding an inquiry ordinarily sit in public, but it shall be open to him, in view of special circumstances of a case, to hold his sittings or part thereof in private."

Then the powers of the Judges are given in Clause 11 (4), which says :

"(4) Any proceedings before the Judge shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code."

I will presently come to this point as to whether by legislating like this we make it a judicial proceeding. By saying that proceedings under this Bill before the Judge would be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, whether we make a judicial proceeding or whether it is not a judicial proceeding I will come to the point subsequently. Clause 13 deals with the Findings of the Judge. It says :

> "(1) The Judge shall, at the end of the inquiry, pronounce his findings in public and report the same to the Governor.
>
> (2) Where the Judge is of opinion that it is expedient in the interests of justice that the persons accused or any other person concerned with the subject matter of the accusation should be prosecuted for any offence referred to in section 6 of the Cirminal Law (Amendment Act, 1952) he shall record a finding to that effect stating his reasons therefor."

Sir, after having adopted this elaborate enquiry, elaborate procedure what is it that the Judge does? The Judge has to give his findings, and if he is convinced that there is a prima facie case for taking up proceedings under Criminal Law Amendment Act, 1952, then he will have to give that finding and send it to the Governor. Sub-clause (4) says :

> "Where a finding referred to is recorded by the Judge, the Vigilance Commissioner shall take all necessary steps for the prosecution of the person concerned, including, where necessary the seeking of the sanction for such prosecution."

We come to the last stage ; the role, the great role that the Chief Justice, the High Court Judge or the District Judge would play under this Bill and the functions that they are going to discharge under this Bill. If there is any necessity, then he has to seek the sanction for prosecution and prosecute and then the other provisions are as to how the Vigilance Commissioner has to proceed with the prosecution, that is to say, we come to the stage of prosecution. What is it that the Judges have done ? They have only enquired in the matter with reference to the records, and after recording a finding under Clause 13 (2) that it is expedient in the interest of justice that the person accused or any other person concerned should be prosecuted for any offence referred to in section 6 of the Criminal Law, he shall record a finding to that effect. I think, if I had only done this, the House would have been convinced that the role, that the functions that are being assigned to the Judges under this Bill are no better than the functions that the Police Inspector or Sub-Inspector discharges. All right : it may be the pleasure of the House to entrust those functions. Supposing we have the power to make such a legislation and entrust the responsibility of investigation to these Judges, we can very well do it. I don't say that it would be inappropriate. But, can we do it, is my point.

(SRI K. PUTTASWAMY)

This takes me to a further point as to what are the offences? It is better that I take the members to the provisions of the Criminal Law Amendment Act also, because the members must refresh their memory about what are the offences that are made punishable under this Act. These are offences under the Indian Penal Code and a special procedure has been laid down for prosecuting persons under those sections. I hope that I am not tiring the House. Because it is an important matter, I would like to make some reference to those sections. Section 161 deals with a public servant taking gratification other than legal remuneration irrespective of an official act. This was also punishable. But a Special procedure and appointment of a special Judge was provided under the Criminal Law Amendment Act, 1952.

SRI K. H. PATIL.—May I know if a Minister is a corrupt one, under what provisions of the law he could be punished for taking bribe or gratification?

SRI K. PUTTASWAMY.—I will come to that point later. In fact, it may not be necessary to advance any arguments on that particular point. I will touch it later.

I was referring to the Criminal Law Amendment Act which refers to the offences punishable by the special procedure provided for under sections 161 to 165A of the Indian Penel Code, 1860. I will just read out the headlines of these sections which are as follows:

> "Section 161 deals with public servant taking gratification other than legal remuneration in respect of an official act."
>
> "Section 162 deals with taking gratification, in order, by corrupt or illegal means, to influence public servant."
>
> "Section 163 deals with taking gratification, for exercise of personal influence with public servant."
>
> "Section 164 deals with punishment for abetment by public servant of offences defined in section 162 or 163."
>
> "Section 165 deals with public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant."
>
> "Section 165A deals with punishment for abetment of offences defined in section 161 or section 165."

Then, I will read out section 165A of the Indian Penal Code, which is as follows:

> "165A. Whoever, abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

I think, Sir, for my purpose I need not take the House to any other matters connected with that. My object was only to say that the Criminal Law of 1952 deals with cases under sections 161 to 165 and they have made provisions for the appointment of Special Judge, so that the matters complained of may be heard and decided by the Judge as expeditiously as possible.

Then, Sir, I pointedly brought one matter to the notice of this Hon. House and that is sub-clause (4) of clause 11 of the Bill that is before the House. It reads thus:

> "11. (4) Any proceeding before the Judge shall be deemed be to judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code."

Sir, a similar provision also exists in the Commission of Inquiry Act, 1952. I would like to place all these points before the House, so that the House might appreciate the stand taken by me. Sir, sub-section (5) of section 5 of the Commission of Inquiry Act, 1952 reads thus:

> "5. (5) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code."

It is the same thing as contained in sub-clause (4) of clause 11 of the Bill brought by the hon. Member Sri Nanje Gowda. Supposing sub-section (5) of section 5 under the Commission of Inquiry Act, 1952 which provides that a proceeding before the Commission shall be deemed to be a judicial proceeding, is held to be valid, then the provision contained in sub-clause (4) of clause 11 of the Bill also shall have to be treated as valid. I will come to that point later, and there is a decision of the Supreme Court also on that point.

Sir, I was submitting that certain special procedures are provided in respect of certain offences. The Prevention of Corruption Act, 1947 is also a special Act. Section 5A of the said Act reads thus:

> "5A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police-officer below the rank,—
>
> (*a*) in the presidency-towns of Madras and Calcutta, of an Assistant Commissioner of Police,
>
> (*b*) in the presidency-town of Bombay, of a Superintendent of Police, and
>
> (*c*) elsewhere, of a Deputy Superintendent of police,
>
> shall investigate any offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under sub-section (2) of section 5 of this Act, without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant."

This is the special provision that I mentioned sometime earlier.

(SRI K. PUTTASWAMY)

Sir, when the matter is referred to the Vigilance Commissioner for prosecution, then he has to follow all this procedure. What a ridiculous position it is! The Judge of a High Court gives a finding and then that finding is referred to the Vigilance Commissioner and he seeks the sanction of a Magistrate. The Vigilance Commissioner perhaps will have to act through the police officer. He gives to the police officer and the police officer has to investigate the offence without the order of the Presidency Magistrate or Magistrate of the first class. I do not know, how a Magistrate of the first class can exercise his judicial mind on a matter which has been scrutinised by the Judge of the High Court. Would it ever be possible for any officer of the Judiciary to bring his independent mind then consider the question of giving or not giving permission? My submission is that it is not possible. In sub-clause (4) of clause 11 there was a decision on this point. I must answer a query raised by one hon. Member here. Whenever ojections are taken on the ground that an appeal is ultra vires, the relevant forum is the Supreme Court or the High Court. These matters have been gone into in detail by the Speaker and a ruling has already been given on some points. I would come to the ruling of the Chair. What is the extent of its application and whether that ruling applies to this point is the point at issue. I was saying about the Commission of Enquiry and whether it is a judicial proceeding. This matter has been dealt with by the Supreme Court. I think, the hon. Member Sri K. H. Patil will hear me attentively on this decision. Then there will be no room for his doubt. This point arose in a Bombay Case in which very big persons were involved. It is in A. I. R. 1958 — Supreme Court 538 - para 8 page 546. He has made an observation when exactly a matter can be treated as a matter of judicial procedure. The case arose under Commission of Enquiry Act. I may also draw the attention of members to sub-section (5) of Section 5. In para 8 this point has been in considered. In recent years, so many proceedings have been raised under the Commission of Enquiry Act. They say the only power that the Commission has is to enquire and make a report embodying therein its recommendations. The recommendations are not merely recommendations but they are judicial findings. In para 8 of the Judgement this has been considered.

> "... we are unable to accept the line of reasoning advanced by the learned Counsel. The Parliament has made a law with respect to enquiry and has left to the Government to set up the Commission of enquiry in certain circumstances referred to in Section 3 of the Act."

Therefore the Commission can make recommendations and there can be no question of usurpation of powers.

SRI H. N. NANJE GOWDA.—He is telling about what is stated in the Commission of Enquiry Act. He is speaking on the merits and demerits of the Bill. This is a talk which can be raised at the time of

the consideration. It is not the time when either the Minister or the Speaker can sit in Judgement. The Minister is explaining in detail. He read quotations after quotations which are not necessary now. He may do so at the time of consideration of the Bill. The House may consider all these points when the consideration is taken up.

Sri K. PUTTASWAMY.—I may be wrong. It is ultimately the Chair that has to give a ruling.

Mr. SPEAKER.—Let us hear the Hon. Minister fully. He is explaining what will be the nature of the recommendations of the Commission and whether they are judicial in nature or merely recommendation. He is saying that the recommendations are not merely recommendations but they are judicial findings.

7-00 P.M.

Sri B. B. SAYANAK.—I rise to a point of order Sir. There is a half-an-hour discussion today.

Sri K. PUTTASWAMY.—I am sorry I just wanted to submit to the House at what stage I am. It would take at least an hour more. I do not know whether the House will have patience.

Mr. SPEAKER.—Then we shall hear the Hon'ble Minister next time.

Before we go to the next item of business, my attention is drawn to something that happened in this House this afternoon when I was not here. The hon. Deputy Minister for Public Works wants to make a statement.

Statement by the Deputy Minister for Public Works *re*: a question of Privilege raised aganist him.

† Sri BASAVARAJ MAGAVI (Deputy Minister for Public Works).—I am very sorry that my answer to a supplementary question put by Hon'ble Member, Sri G. N. Patil, should have formed the basis of a question of privilege. I have toured that area during my visit to Bijapur Division. I added that I visited the House of the Member, Sri S. M. Gureddi and had food there. Now I recollect that I did not visit Sri Gureddi's house on that occasion. I am quite aware of the need to preserve and maintain the dignity of the House and of the hon. Members and I am also aware of the need for utmost responsibility when answering questions or making statements in the House. If I have created any impression in the mind of the hon. Members that I answered questions lightly, I may assure the House that it is not so and I express regret if my answer should have created such an impression. In the light of what I have said, I trust the matter will be allowed to rest.

Mr. SPEAKER—I hope the House agrees to drop the matter. The matter is dropped. Now we will take up half-an-hour discussion.

Half-an-hour discussion arising out of replies to question No. 23 *re*: allotment of lands from Gairan (Grazing land) in Angol Village

Sri B. B. SAYANAK.—Mr. Speaker Sir, I beg to raise half-an-hour discussion on starred question No. 47 (23) of Fourth List regarding allotment of lands from Gairan in Angol village of Belgaum Taluk.

Sir, Angol village was a taluka in the erstwhile princely State of Kurudwad Sr. and the Ruler of Kurudwad State had allotted 21 acres and 8 guntas of land for the grazing of cattle of the village. Sir, in the year 1948 the State was merged and Angol became part of Belgaum taluk in the then Bombay State. The Bombay State has not disturbed this Gairan and it was maintained as Gairan for grezing the cattle of the village. Sir, after this the village panchayet Act was passed in Bombay State and under that also the Gram panchayet of Angol village had maintained this gairan.

Mr. SPEAKER.—I request the hon. Member to be brief. Members are tired and they are not in a mood to hear the hon. members.

Sri B. B. SAYANAK.—I will be brief Sir. After the States Reorganisation, when this Angol village merged in the Mysore State.....

Mr. SPEAKER.—The historic aspect is not necessary. The Hon. Member may come to the point.

Sri B. B. SAYANAK.—According to the award of the Mahajan Commission which was appointed to go into the border dispute between Maharastra and Mysore has stated that Angol Wadgaon and Madhavpur are predominently Marathi Villages are lungs to Belgaum City and that is why, the Commission said these villages were retained in Mysore State. After that, taking advantage of this decision of the Mahajan Commission, the Mysore Government said that they should merge these three villages in Belgaum City. At that time, there was no popular elected body in Belgaum Municipality.

Mr. SPEAKER.—The hon. Member's point is that the question was altogether different.

Sri B. B. SAYANAK.—The Administrator had allotted these lands to the K. L. E. society, and an extent of 5 acres to the Harijans. The whole land was asked by a society called the Belgaum Taluk S. C. and S. T. Co-operative society on 28th April 1967 and also this K. L. E. society. But at that time, there was this Gram Panchayat and the gram panchayat totally refused to give this land. Taking advantage of the merger of this land into Belgaum City, the Administrator colluding with the Deputy Commissioner and the Divisional Commissioner has allotted this land to the KLE society. According to me there is no other land in Angol village which has a population of 10,000 and out of that, the majority—nearly 6,000 to 7,000 are agriculturists. They wanted to have this land for grazing purposes, but Government is not giving it to them. Government has acquired 100—200 acres of land for the industrial estate and the people of Angol Village have no other grazing

ground for their cattle. Therefore Sir, I request Government not to give away this land. Government has not yet handed over possession of the land to K.L.E. Society and Harijans; and if the Government wanted to give this land to some persons for residential purposes, when there is a society registered with a membership of 800, and when they are houseless persons, why Government did not give the land to these poor and down-trodden Harijan people? The land is worth Rs. 30,00,000 at present such a valuable land is allotted to the K.L.E. Society which is rich enough to purchase any land for the college. The Janatha Vikas Mandal which was started by local people asked for that land for educational purpose. This Government has not given it to that Mandal. The Hon. Minister, while replying to my question stated that the K.L.E. Society has applied for it in the year 1st January 1967 but the land was not allotted at that time. When the Hon. Minister has taken the charge of the Revenue Department. As he was the Chairman of the K.L.E. Society, he has allotted it to the K.L.E. Society. He ought not have done this. The Government has not handed over this land to the K.L.E. Society or the Harijans yet. It must be maintained as gairan to help the agriculturists for grazing cattle.

SRI H. V. KOUJALGI (Minister for Revenue).—Mr. Speaker, I have patiently heard the hon. Member Sri Sayanak. I wish to say to this hon. House, at the outset itself, that the questioner's intention in putting this question is not *bona fide*. Of course, it is a fact that an extent of about 21 acres of land was once *gairan* in Angol Village in Belgaum Taluk. When Angol Village merged with the Belgaum Municipality, this piece of land was no longer required for *gairan purpose* because in the outskirts of the Belgaum City there were so many other lands. With the merger of this Angol Village in Belgaum Municipality, the gairan land became the property of Belgaum City.

Now, let me refer to the hon. Member's first point that the land was required for gairan purpose. If at all it was required for gairan purpose, why did my hon. friend, who claims to be the President of one Janatha Vikas Mandali, as admitted by himself, apply for the allotment of this land for the construction of a College. If the land was necessary for gairan purpose, why did he apply for it for constructing a college? The very fact that he wanted the land for the construction of a college shows that this land was not required for gairan purpose.

Now regarding his second point that it had been allotted to the Karnataka Liberal Education Society, I wish to say that it is the premier educational institution in the Karnataka. It was started in the year 1916. The Society is running 12 Colleges and 40 to 45 High Schools and its properties are worth nearly Rs. 2 crores. Such an institution had applied for this site in the month of February 1967 when I was neither the Chairman of the Society nor a Minister in this Government. When the proceedings relating to the grant of the site were finalised and recommendations were made in favour of the Society, my hon. friend applied to the Assistant Commissioner requesting that this

(SRI H. V. KOUJALGI)

land should be given to him for construction of a college on that site. Final order had to be passed on the recommendation. Eight days prior to that, when the papers were pending before the Government in Bangalore, my hon. friend applied to the Assistant Commissioner of Belgaum for the site, knowing full well the stage at which the matter stood. In this connection, I may also inform the House that this Janatha Vikas Mandali, which was founded in 1957, had previously started a school called Lal Bahadur High School but it was closed thrice. Even to-day this High School is not running and the hon. Member Sri Sayanak himself has informed the Director of Public Instruction that the High School was closed for want of public co-operation, funds and students. When that is the state of affairs of the Mandali, this hon. Member applies for the site on the plea that it is required for constructing a college building and that without funds and without students, I fail to understand the *bona fidas* of the hon. Member.

Sri B. B. SAYANAK.—I am not a member of the Janatha Vikas Mandali.

Sri H. V. KOUJALGI.—The hon. Member has given his application in writing. He is at least connected with that institution.

Sri B. B. SAYANAK.—Sri B. R. Suntankar is the President of the Mandali.

Sri H. V. KOUJALGI.—It is a very strange that without having to do anything with the Mandali, he applies for the site for the construction of a college.

The third point raised by him is that I am the president of the K. L. E. Society and now that I am myself the Revenue Minister, I have allotted this land to the K. L. E. Society. When the concerned papers come to me, I submitted the entire proceedings to the Hon. Chief Minister for suitable orders lest people should think that as I was the Chairman of the Society I might be interested in it. The Hon. Chief Minister has, in his own handwriting, passed the order on the file. He has granted that land to the Society. I have not granted that land. Now between these two institutions, the Janatha Vikas Mandali and the K. L. E. Society which has a standing of over 55 years and which is running so many educational institutions, it should be impartially judged which institution deserved the site. So it could be seen now that the allegations made by the hon. Member are ill-founded. Government have properly considered the issue. The local Officers had made recommendation in favour of the K. L. E. Society. After due consideration of all aspects, the site has been granted to the K. L. E. Society. The argument of my hon. friend that the said land was required for gairan purpose, is bogus. My hon. friend has all of a sudden developed sympathy for the Scheduled Caste people and stated that this intention was that this piece of land might be allotted to

Harijans. The Divisional Commissioner has taken into consideration the requirement of the Harijans and five acres of land have also been reserved for them and only the remaining portion has been recommended to be given to the K. L. E. Society. I submit that the intention of the hon. Member is putting the question had no *bona fides*. The allegations of favouritism are baseless.

Sri B. B. SAYANAK.—Is it a fact that the Scheduled Castes and Tribes Co-operative Housing Society had asked for the whole area ?

Sri H. V. KOUJALGI.—There are only 31 families in that Village and about 15 are houseless. So, 5 acres have been reserved for construction of houses. Even till today nobody has come forward for the sites. Still they are reserved for them. Only the other day, I have written to the concerned members to form a Society and take possession of the allotted site.

Postponement of Elections of Members to several Committees—Announcement

Mr. SPEAKER.—I have an announcement to make. The elections to the Public Accounts Committee, the Estimates Committee and the Subordinate Legislation Committee, which had been postponed, will now be held on Tuesday, the 9th September 1969 and the elections to the House Committee and the Committee on Assurances will be held on Wednesday, the 10th September 1969.

The House will now adjourn and re-assemble at 1 P.M. on Monday, the 8th.

The House adjourned at Twenty Minutes past Seven of the Clock to meet again at One of the Clock on Monday, the 8th September 1969.

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